



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 258 OF 2007 CONSOLIDATED WITH 163 OF 2007

IN THE MATTER OF THE ESTATE OF THE IMATHIU M'ARIMU - DECEASED

FELICITY KARWITHA JAMES

STELLA KANINI MATHIU.....PETITIONERS

AND

STEPHEN MUBICHI NGERIAOBJECTOR

RULING

The deceased Imathiu M'Arimi died intestate on 24th December 2001 leaving behind:-

- Florence Karianki Mathiu –Widow
- Stephen Mubichi – Son
- Stella Kanini – daughter
- Felicity Karwitha – daughter

The estate is comprised of L.R. Abothuguchi/Ruiga.1366. Stephen Mubichi Ngeera petitioned for Letters of Administration and grant was made to him on 11th June 2008 upon expiry of the statutory 6 months period the administrator applied for confirmation of Letters of Administration by summons dated 8th January 2009.

In the supporting affidavit he proposed the distribution of the only place of land as follows:-

- a. 2 acres out of L.R. No. Abothuguchi/Ruiga/1366 to go to him.
- b. 2 acres to be shared jointly between the widow and the deceased persons and daughters.

By summons dated 3rd March 2009 the widow to the deceased Florence Karianki M'Imathiu sought for revocation of the grant and an order of inhibition on the ground she had filed succession cause No. 163 of 2007 in respect of the same estate the deceased being her husband and grant had been confirmed on 16th January 2009 but the Administrator herein filed the cause herein secretly and fraudulently. She said the petitioner herein was not the son to the deceased and was not entitled to file the cause and that he made false statements that he is son to the deceased.

The applicant claimed the petitioner had moved with utmost speed to distribute the estate to the detriment of the real dependants and beneficiaries of the estate. In her supporting affidavit the applicant averred that she was surprised to find had filed a Succession Cause when she had filed and concluded another one

No. 163 of 2007. She said the grant in Succession Cause No. 258 of 2007 was confirmed on 13th February 2009 long after the cause in No. 163 of 2007 had been confirmed.

In Reply Stephen Mubichi Ngeera averred that the widow refused to participate in the filing of succession cause and later secretly filed cause No. 163 of 2007 after being issued secretly with chief's letters. He said he learnt of the cause No. 163 of 2007 later on 18.3.2009. He said the applicant is not his mother but he is a son to the deceased. In the same way that applicant had applied for revocation of grant of Letters made to him he had also filed application in cause no. 163 of 2007 to revoke grant made to applicant and he proposed the 2 causes to be consolidated. When Florence Karianki Imathiu died on 26th day of March 2010. Felicity Karuitha James applied by summons dated 18th January 2011 to be substituted as petitioner in succession cause no. 163 of 2007. Stella Kanini the deceased daughter also swore affidavit and averred that Stephen Mubichi Ngeera was not the deceased person's biological son in her affidavit sworn on 18th April 2012.

The 2 causes were consolidated on 23rd September 2009 and cause no. 163 of 2007 was to be consolidated into. On 1st November 2011, Felicity Karwitha, Stella Kanini and Stephen Mubichi were made joint administrator and Administratrix to the estate of the deceased with orders that either of them can apply for confirmation of the joint grant.

Application dated 12th January 2012 for confirmation and protest dated 18th April 2012 and supplementary affidavit were ordered to be canvassed by way of statements of witnesses on 25th January 2017.

Later on 25th January 2017 directions were taken that applications be canvassed by written submissions which mention was fixed on 17th April 2017 to confirm compliance. Up to 7th March 2018 the objectors counsel Mr Mutegi who had been given 21 days on 4th May 2017 to file submissions had failed to do so and as a consequence the Respondents could not file submissions as there was nothing to respond to. Stephen Mubichi Ngeera claimed to be son of the deceased but the widow to the deceased who also died in the cause of proceedings as well as Felicity Karwitha and specifically Stella Kanini averred that he was a nephew to the deceased and not a son.

There is no explanation why the chief of Gatimbi location in the letter dated 17th July 2006 did not include the name of Stephen Mubichi Ngeera as a son and subsequently on 14th September 2006 the same chief wrote a letter including the name of Stephen Mubichi as a son to the deceased. There is no explanation what informed the chief in writing 2 contradictory letters 2 months apart.

Stephen Mubichi Ngeera has not given the name of the mother who sired him together with the deceased. The Chief ought to have sworn an affidavit to explain his 2 contradictory letters in respect to this estate.

In affidavit sworn on 21st day of October 2014 Stephen Mubichi claimed that his mother was Priscilla Gaiti who was by then over 80 years old frail and sick and he sought that she should be allowed to testify urgently concerning Stephen Mubichi's Paternity claims that Priscilla Gaiti had children with the deceased other than Stephen Mubichi raises more doubt to Stephen Mubichi's claim to this estate. Why they were not included as beneficiaries to the deceased estate. Why didn't Joanina Kathomi and Patrick Nkumani even swear affidavits to support Stephen Mubichi Ngeera's claim to this estate? I do find that the rightful beneficiaries to the deceased estate herein are:-

1. Stella Kanini
2. Felicity Karwitha

The claim by Stephen Mubichi Ngeera is shrouded with a lot of doubts. In the circumstances Stella Kanini and Felicity Karwitha the biological children of the deceased will share the estate equally. Objection raised by Stephen Mubichi Ngeera is disallowed. Costs to Stella Kanini and Felicity Karwitha.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 10TH DAY OF MAY 2018.

HON. A.ONG'INJO

JUDGE

IN THE PRESENCE OF:

C/A: Penina

Petitioner: - Mr Mutua Advocate for Petitioner

Objector: - Mr Mutegi Advocate for Objector- No appearance

HON. A. ONG'INJO

JUDGE